

REMARKS

Claims 1-75 are pending in the application. Reconsideration and allowance of the present application in view of the remarks below are respectfully requested.

In the final Office Action, the Examiner:

1. rejected claims 1-75 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-41 in United States Patent No. 6,726,469 (“the ‘469 Patent”);
2. rejected claims 1-75 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-52 in United States Patent No. 6,491,515 (“the ‘515 Patent”);
3. rejected claims 1-75 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-52 in United States Patent No. 6,488,492 (“the ‘492 Patent”);
4. provisionally rejected claims 1-75 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 in co-pending application No. 10/788,195 (“the ‘195 Application”); and
5. provisionally rejected claims 1-75 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-69 in co-pending application No. 10/398,975.

The above rejections are duplicative of the rejections in a prior Office Action dated October 4, 2004, to which Office Action, a Response and a Terminal Disclaimer were filed with the necessary fee on January 4, 2005. The final Office Action did not approve such Terminal Disclaimer for allegedly not complying with the requirements of 37 C.F.R. § 1.321(b). Applicants now resubmit a Terminal Disclaimer without prejudice, duly signed by the attorney of record, in compliance with the requirements of 37 C.F.R. § 1.321(b).

Applicants reiterate, herein, the remarks in their response submitted on January 4, 2005.

As an initial matter, it is respectfully submitted that application No. 10/398,975 is incorrect as application No. 10/398,975 corresponds to an apparatus and method for processing workpieces. It is believed that the Examiner meant application No. 10/389,975 (“the ‘975 Application”).

A terminal disclaimer for the '469 Patent, the '515 Patent, the '492 Patent, the '195 Application and the '975 Application is submitted herewith on the condition that only the terminal part of any patent granted on the above-identified patent application which extends beyond the expiration date of the '469 Patent, the '515 Patent, the '492 Patent, the '195 Application and the '975 Application is hereby disclaimed. Nothing here is to be deemed as an admission with regards to the validity of any claim, and in particular is not an admission that the claims are obvious in view of the above-identified patent and co-pending patent applications. *See Ortho Pharmaceutical Corp. v. Smith*, 959 F.2d 936 (Fed. Cir. 1992).

CONCLUSION

As the double patenting rejection has been overcome, all claims are believed to be in condition for allowance. An early notice of allowance is respectfully requested. Should the Examiner not agree with applicants' position, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the allowance of the application.

Respectfully submitted,

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Brian M. Rothery

Reg. No.



50,333

By: Fritz Klantschi

Reg. No.

JONES DAY

222 East 41st Street

New York, N.Y. 10017-6702

212-326-3939

Enclosures